



August 31, 2001

Mr. Steven E. Kirkland  
Attorney at Law  
1817 Lubbock Street  
Houston, Texas 77007

OR2001-3868

Dear Mr. Kirkland:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151548.

The Avenue Community Development Corporation (the "corporation"), which you represent, received a request to inspect and have copies provided of all records maintained by the corporation with respect to a house located at a specified address. You claim that the corporation need not release any of the requested information, since it is not a governmental body subject to the Public Information Act (the "Act"). In the alternative, you claim that, if this office determines that the corporation is a governmental body, then the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and your claimed exception.

We first address your claim that the corporation is not a governmental body subject to the Act. The Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. In order to determine whether the corporation is subject to the Act, we must look at the scope and application of the Act and the definition of public information. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Section 552.003 of the Government Code defines "governmental body" in part as follows:

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003(1)(A)(x). The receipt of public funds for the general support of the activities of a private organization brings that organization within the definition of a "governmental body," unless the public funds are paid in exchange for a measurable amount of service as would be expected in a typical arms-length transaction. *See* Open Records Decision No. 228 (1979); *see also* Attorney General Opinion JM-821 (1987).

The courts have also considered the scope of the Act's definition of "governmental body." *See Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989). In *Kneeland*, the court observed that in interpreting the predecessor to section 552.003, the opinions of the attorney general generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a 'governmental body.'" Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

*Id.* In subsequent decisions, this office has found certain other private entities to be governmental bodies under section 552.003 of the Act or its statutory predecessor. *See e.g.*, Attorney General Opinion JM-821 (1987) (volunteer fire department receiving general support from fire prevention district); *see also* Open Records Decision Nos. 621 (1993) (Arlington Chamber of Commerce and Arlington Economic Development Foundation, through which chamber of commerce received support of public funds), 602 (1992) (portion of the Dallas Museum of Art supported by public funds), 273 (1981) (search advisory committee established by board of regents to recommend candidates for university presidency that expended public funds). In contrast, certain private entities were determined not to be governmental bodies under the statutory predecessor to section 552.003. *See, e.g.*, Open Records Decision Nos. 602 (1992) (portion of the Dallas Museum of Art not supported by public funds, in particular, a specific privately donated art collection), 569 (1990) (Fiesta

San Antonio Commission, which leased facilities from city and received permits and licenses to use public streets for parades and other events).

You inform us that homebuyers who qualify receive direct grant assistance from the City of Houston which is funded at closing on the sales of houses that are rehabilitated by the corporation. You also state that while these grant funds are public in nature under the Act, they do not vest in the corporation. Furthermore, you advise that although the corporation has directly received grant funding in the past, these particular funds have already been exhausted by the corporation and that the corporation since then has not received direct operating support from the City of Houston, the state, or the federal government. Finally, you state that the only grant funds received since the previous funds were exhausted covered development costs for a multi-family apartment complex that is unrelated to the program at issue. Based on your representations, we find that public funds are not received by the corporation for its general support. Furthermore, we find that to the extent that public funds have been received by the corporation in the past, the corporation has not received public funds for the program at issue. Therefore, we conclude that, for purposes of the program at issue, the corporation is not a governmental body under the Act. Accordingly, the requested information is not subject to the Act and may, therefore, be withheld from disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

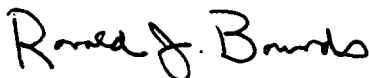
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 151548

cc: Dr. Michael L. Saxe  
1911 Spring Street  
Houston, Texas 77007  
(w/o enclosures)